PATENT

Atty Docket No.: 10017990-1
App. Ser. No.: 10/020,256

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. Claims 1-5, 11, 19, 21, 24, 26, and 28 have been amended herein. Support for the amendments may be found in original claims 19 and 21 and page 17 of the originally filed specification. Therefore, claims 1-33 are currently pending of which claims 1, 11, and 24 are independent. No new matter has been introduced by way of the claim amendments and entry thereof is respectfully requested.

Claims 1-3, 7-16, 24, 27, and 29-31 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 7, 11, 16-18, 28, and 29 of copending Application No. 10/020,255.

Claims 2-5 were rejected as under 35 U.S.C. §112, second paragraph, for allegedly having insufficient antecedent basis.

Claims 1-5, 11, 15-18, 24, and 29-33 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Blanchard 6,347,114 ("Blanchard").

Claims 6, 7, 25, and 27 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Blanchard in view of Ellis et al. (U.S. Pub. No. 2005/0020223) ("Ellis").

Claims 8 and 12 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Blanchard in view of Nonomura et al. (6,094,234) ("Nonomura").

Claims 9, 10, 13, and 14 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Blanchard in view of Setogawa et al. (5,822,024) ("Setogawa").

These rejections are respectfully traversed for the reasons stated below.

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Allowable Subject Matter

Claims 19-23, 26, and 28 were objected to as being dependent upon a rejected base claims, but allowable if rewritten in independent form. Accordingly, subject matter from claims 19 and 21 has been included in independent claims 1, 11, and 24.

Claim Rejection Under Double Patenting

Claims 1-3, 7-16, 24, 27, and 29-31 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 7, 11, 16-18, 28, and 29 of copending Application No. 10/020,255. However, the independent claims of copending Application No. 10/020,255 were amended to include features not contained in the instant claims. Similarly, the instant claims have been amended herein to include features not contained in the claims of said copending Application. Therefore, each respective set of claims contains divergent subject matter. Accordingly, withdrawal of this rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §112, second paragraph

Claims 2-5 were rejected as under 35 U.S.C. §112, second paragraph, for allegedly having insufficient antecedent basis. Claims 2-5 have been amended herein and, therefore, currently have antecedent basis for all features contained therein.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed

combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-5, 11, 15-18, 24, and 29-33 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Blanchard. This rejection is respectfully traversed because Blanchard fails to disclose the invention as set forth in independent claims 1, 11, and 24, and the claims that depend therefrom.

Blanchard fails to teach "an energy detector, which detects an audio event in said audio data by measuring an energy content of said audio data," as recited in independent claims 1 and 11, and "comparing an energy content of said audio data to a predetermined energy threshold," as recited by independent claim 24.

The Applicant notes that these features were previously recited in original claims 19 and 21, both of which were indicated as allowable, because Blanchard, like the remaining prior art of record, fails to teach these features. Blanchard is drawn to a video recording and logging device which includes an apparatus to detect scene changes. Blanchard measures the amplitude of background audio levels to detect scene changes. Blanchard is silent with

respect to measuring energy content in audio data and using energy content to detect an audio event.

For at least the foregoing reasons, it is respectfully submitted that Blanchard fails to disclose each and every element of independent claims 1, 11, and 24 and therefore cannot anticipate these claims. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1, 11, and 24 and to allow these claims.

Claims 2-5, 15-18, and 29-33 are also allowable over Blanchard at least by virtue of their respective dependencies upon allowable claims 1, 11, and 24.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 6, 7, 25, and 27 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Blanchard in view of Ellis. This rejection is respectfully traversed because

Blanchard and Ellis, taken alone or in combination, fail to teach or suggest the features of claims 6, 7, 25, and 27.

As set forth above, Blanchard fails to the features of independent claims 1 and 24 from which claims 6, 7, 25, and 27 depend, respectively. Ellis fails to cure the deficiencies of Blanchard. Therefore, claims 6, 7, 25, and 27 are allowable, at least, by virtue of their respective dependencies on allowable claims 1 and 24.

For at least the foregoing reasons, it is respectfully submitted that the Office Action has failed to establish a *prima facie* case of obvious against claims 6, 7, 25, and 27. The Examiner is therefore respectfully requested to withdraw this rejection and to allow these claims.

Claims 8 and 12 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Blanchard in view of Nonomura. This rejection is respectfully traversed because Blanchard and Nonomura, taken alone or in combination, fail to teach or suggest the features of claims 8 and 12.

As set forth above, Blanchard fails to the features of independent claims 1 and 11 from which claims 8 and 12 depend, respectively. Nonomura fails to cure the deficiencies of Blanchard. Therefore, claims 8 and 12 are allowable, at least, by virtue of their respective dependencies on allowable claims 1 and 11.

For at least the foregoing reasons, it is respectfully submitted that the Office Action has failed to establish a *prima facie* case of obvious against claims 8 and 12. The Examiner is therefore respectfully requested to withdraw this rejection and to allow these claims.

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Claims 9, 10, 13, and 14 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Blanchard in view of Setogawa. This rejection is respectfully traversed because Blanchard and Setogawa, taken alone or in combination, fail to teach or suggest the features of claims 9, 10, 13, and 14.

As set forth above, Blanchard fails to the features of independent claims 1 and 11 from which claims 9, 10, 13, and 14 depend, respectively. Setogawa fails to cure the deficiencies of Blanchard. Therefore, claims 9, 10, 13, and 14 are allowable, at least, by virtue of their respective dependencies on allowable claims 1 and 11.

For at least the foregoing reasons, it is respectfully submitted that the Office Action has failed to establish a *prima facie* case of obvious against claims 9, 10, 13, and 14. The Examiner is therefore respectfully requested to withdraw this rejection and to allow these claims

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: June 26, 2007 By

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